

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3  
4 HUNTER QUINN BUCKMAN-FALDUTI, a minor, No. 08-4778 CW  
5 by and through his guardian ad litem  
6 MICHELLE RALEIGH; THERESA BUCKMAN-  
FALDUTI; AND TODD FALDUTI,

7 ORDER DENYING MOTION  
8 FOR CHANGE OF VENUE

9 Plaintiffs,

10 v.  
11 Defendant.

12 \_\_\_\_\_ /  
13 On December 12, 2008, Defendant KinderCare filed a Motion to  
14 Transfer Venue pursuant to 28 U.S.C. section 1404(a). Plaintiffs  
15 oppose the motion. Having considered the papers submitted and the  
16 applicable law, the Court denies KinderCare's Motion to Transfer  
17 Venue.

18 BACKGROUND

19 This case is in federal court on diversity jurisdiction.  
20 Plaintiffs are citizens of California, and Defendant KinderCare is  
21 a Delaware corporation which does business in Washington State.  
22 The following facts are alleged in the complaint in this action.  
23 Plaintiff Theresa Buckman-Falduti (Buckman-Falduti) began her  
24 employment as a day care worker with Defendant KinderCare in  
25 Vancouver, Washington in April, 2007. Buckman-Falduti learned she  
26 was pregnant on May 30, 2007 and within a few days informed her  
27 supervisors that she was pregnant.  
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1 Buckman-Falduti became extremely ill in late July, 2007 while  
2 she was working at the Vancouver KinderCare. At that time her  
3 doctors did not identify the cause of her illness. In August,  
4 2007, Plaintiff Todd Falduti's employment was transferred to  
5 California. Declaration of Theresa Falduti at ¶ 5. Buckman-  
6 Falduti transferred her employment to the KinderCare center in  
7 Antioch, California.

9 Once in California, Buckman-Falduti discovered that her fetus  
10 had severe abnormalities. The complaint alleges that tests  
11 revealed that these abnormalities had been caused by Buckman-  
12 Falduti having contracted Cytomegalovirus (CMV) during her  
13 employment at KinderCare in Vancouver, Washington.

15 Plaintiff Hunter Quinn Buckman-Falduti (Hunter) was born in  
16 January, 2008. He suffers from a variety of extensive and complex  
17 medical conditions including seizure disorders. Plaintiffs filed  
18 this action on October 17, 2008 in the United States District Court  
19 for the Northern District of California. The complaint alleges  
20 three state law causes of action under Washington law: two for  
21 negligence and one for loss of consortium. The first negligence  
22 cause of action alleges that Defendant breached duties imposed upon  
23 it by Washington law and regulations to provide employees with  
24 training on health policies and procedures.

26 Defendant has now brought a motion pursuant to 28 U.S.C.  
27 § 1404(a) to transfer venue to the United States District Court for  
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1 the Western District of Washington.

## LEGAL STANDARD

3 Title 28 U.S.C. § 1404(a) states: "For the convenience of  
4 parties and witnesses, in the interest of justice, a district court  
5 may transfer any civil action to any other district or division  
6 where it might have been brought."

8           A motion for transfer under section 1404(a) is addressed to  
9 the sound discretion of the trial court. That discretion requires  
10 "an individualized case by case consideration of convenience and  
11 fairness." DeFazio v. Hollister Employee Share Ownership Trust,  
12 406 F. Supp. 2d 1085, 1088 (E.D. Cal. 2005).

The party moving for a transfer under section 1404(a) bears the burden of showing that transfer is appropriate. Costco Wholesale Corp. v. Liberty Mutual Ins. Co., 472 F. Supp. 2d 1183, 1189 (S.D. Cal. 2007). An action may be transferred to another court if: (1) that court is one where the action might have been brought; (2) the transfer serves the convenience of the parties; and (3) the transfer will promote the interests of justice. E & J Gallo Winery v. F.&P. S.p.A., 899 F. Supp. 465, 466 (E.D. Cal. 1994). Plaintiffs' choice of forum is generally given great weight. DeFazio v. Hollister Employee Share Ownership Trust, 406 F. Supp. 2d at 1088; Radisson Hotels International, Inc. v. Westin Hotel Company, 931 F. Supp. 638, 641 (D. Minn. 1996).

In order to sustain its burden, the moving party must show,

1 among other things, that "transfer will serve the convenience of  
2 the parties and witnesses and will promote the interest of  
3 justice." Costco, 472 F. Supp. 2d at 1189-1190. "Transfer is  
4 inappropriate where it would merely shift rather than eliminate the  
5 inconvenience." Id. at 1195; Copeland Corp. v. Choice Fabricators,  
6 Inc., 492 F. Supp. 2d 783, 789 (S.D. Ohio 2005).

8 DISCUSSION

9 Neither party contests that the action could have been  
10 brought in the Western District of Washington and therefore could  
11 be venued there. Defendant's motion for change of venue is  
12 predicated on asserted inconvenience to witnesses for the defense.  
13 Defendant argues that most or all of the material witnesses reside  
14 or work in Western Washington, and are subject to compulsory  
15 service there, not in California. Defendant further asserts that  
16 litigating Plaintiffs' claims in the Northern District of  
17 California would be significantly more costly than doing so in  
18 Washington.

20 Plaintiffs counter that while Defendant's witnesses may be in  
21 Washington, almost all of Plaintiffs' witnesses are located here in  
22 California. Additionally, Plaintiffs argue that Defendant's  
23 "conclusory statements and arguments regarding the relative  
24 inconvenience of the parties and witnesses are insufficient to meet  
25 the moving party's burden." Costco, 472 F. Supp. 2d at 1193  
26 (moving party must support its motion for transfer with supporting  
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1 affidavits which name the witnesses, state their location, and  
2 explain their testimony and its relevance). This issue is not a  
3 mere formality but has the affect of advising the Court whether the  
4 witnesses are employees of the defendant. The testimony of  
5 employees of the defendant can be obtained because a party can  
6 compel the testimony of its employees at trial. Id.

8 In response, Defendant has presented a declaration which  
9 asserts that it has seven witnesses with particular knowledge of  
10 its health and safety policies for the Vancouver center, and  
11 pertinent information about Buckman-Falduti's employment. Reply  
12 Decl. of Troy Hall at ¶¶1, 3-9. Of those seven witnesses, six are  
13 current employees of Defendant and therefore their presence could  
14 be compelled at trial. Additionally, three of the six are located  
15 in Oregon, not within the jurisdiction of the Western District of  
16 Washington.

18 In contrast, Plaintiffs' witnesses are the physicians who  
19 treated Buckman-Falduti when she was pregnant, and the physicians  
20 with knowledge about Hunter's medical condition. None of these  
21 witnesses is subject to the compulsory process of the Western  
22 District of Washington.

24 Defendant acknowledges that the Court must give deference to  
25 Plaintiffs' choice of forum. However, Defendant cites Pacific Car  
26 and Foundry Co., 403 F.2d 949, 954 (9<sup>th</sup> Cir. 1968) for the  
27 proposition that the plaintiffs' choice of venue is to be given  
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1 minimal consideration where the events giving rise to the action  
2 did not take place in the selected forum. The facts of Pacific Car  
3 are easily distinguished from the current case. In Pacific Car,  
4 the court found that the plaintiff made "no showing worth  
5 mentioning that its own convenience would be served by its choice  
6 of forum," leaving the court with "a choice of forum supported only  
7 by the fact that it was chosen." Id. Such is not the case here.  
8 Hunter's medical condition was diagnosed in the Northern District,  
9 his birth occurred here and his medical treaters are all here.

11 Additionally, in considering the convenience of the parties,  
12 the Court is mindful of Hunter's medical condition and its impact  
13 upon the other Plaintiffs. As the Declaration of Theresa Buckman-  
14 Faldui sets out in detail, Hunter's medical condition makes it  
15 impractical and potentially dangerous for him to travel. Nor could  
16 Buckman-Faldui be away from him for lengthy periods of time,  
17 because she is his primary care-giver. Plaintiffs assert that they  
18 do not have the financial resources to travel outside of California  
19 and provide medical care to their son. Faldui Decl. at ¶ 5.  
20 While Defendant has offered to take the depositions of Plaintiffs  
21 here in Northern California, major inconvenience to witnesses on  
22 both sides would occur in the event that the action were to proceed  
23 to trial.

26 Giving careful consideration to the availability of  
27 witnesses, the relative burdens and costs, the Court finds that  
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1 Defendant does not meet its heavy burden of demonstrating that the  
2 interests of justice favor a transfer away from Plaintiffs' chosen  
3 forum.

4 CONCLUSION  
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6 For the foregoing reasons, the Court hereby DENIES  
7 KinderCare's motion to transfer venue (Docket No. 12).

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9 IT IS SO ORDERED.

10 2/2/09  
11 Dated: \_\_\_\_\_



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12 CLAUDIA WILKEN  
13 United States District Judge  
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